

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 2002 of 2007
WITH
CRIMINAL MISC.APPLICATION No. 2004 of 2007
TO
CRIMINAL MISC.APPLICATION No. 2006 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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CHANDRASHEKHAR, PROP. OF M/S. D/101, ABHILASHA APT. -
Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR CHETAN K PANDYA for petitioner,
 MR RC KODEKAR ADDL.PUBLIC PROSECUTOR for Respondent No.1,
 MR SS PANESAR for Respondent No.2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/10/2007

ORAL JUDGMENT

1. RULE. Mar.R.C. Kodekar, learned Additional Public

Prosecutor waives the service of rule on behalf of the respondent No.1 – State and Mr.S.S. Panesar, learned advocate waives the service of rule on behalf of respondent No.2 – original complainant, in each of the petitions.

2. With the consent of the parties, the matters are finally heard today.
3. As the common question of facts and law arises in these group of petitions, they are being disposed of by this common judgement and order.
4. Criminal Misc.Application No.2002 of 2007 has been filed by the applicant – original accused for appropriate order to quash and set aside Criminal Case No.8145 of 2006 arising out of Inquiry Case No.80 of 2006 (Old Inquiry Case No.59 of 2003) pending in the court of learned Metropolitan Magistrate, Court No.22, Ahmedabad for the offences punishable under sections 406, 407, 420 and 120B of Indian Penal Code and further to quash and set aside order dtd.29/8/2003 ordering inquiry under sec.202 of the Code of Criminal Procedure and the order dtd.11/9/2006 issuing process by the learned Metropolitan Magistrate, Court No.22, Ahmedabad qua the petitioner.

5. Criminal Misc.Application No.2004 of 2007 has been filed by the applicant – original accused for appropriate order to quash and set aside Criminal Case No.8146 of 2006 arising out of Inquiry Case No.85 of 2006 (Old Inquiry Case No.60 of 2003) pending in the court of learned Metropolitan Magistrate, Court No.22, Ahmedabad for the offences punishable under sections 406, 407, 420 and 120B of Indian Penal Code and further to quash and set aside order dtd.29/8/2003 ordering inquiry under sec.202 of the Code of Criminal Procedure and the order dtd.11/9/2006 issuing process by the learned Metropolitan Magistrate, Court No.22, Ahmedabad qua the petitioner.
6. Criminal Misc.Application No.2005 of 2007 has been filed by the applicant – original accused for appropriate order to quash and set aside Criminal Case No.8148 of 2006 arising out of Inquiry Case No.87 of 2006 (Old Inquiry Case No.62 of 2003) pending in the court of learned Metropolitan Magistrate, Court No.22, Ahmedabad for the offences punishable under sections 406, 407, 420 and 120B of Indian Penal Code and further to quash and set aside order dtd.29/8/2003 ordering inquiry under sec.202 of the Code of Criminal Procedure and the order

dtd.11/9/2006 issuing process by the learned Metropolitan Magistrate, Court No.22, Ahmedabad qua the petitioner.

7. Criminal Misc.Application No.2006 of 2007 has been filed by the applicant – original accused for appropriate order to quash and set aside Criminal Case No.8149 of 2006 arising out of Inquiry Case No.88 of 2006 (Old Inquiry Case No.63 of 2003) pending in the court of learned Metropolitan Magistrate, Court No.22, Ahmedabad for the offences punishable under sections 406, 407, 420 and 120B of Indian Penal Code and further to quash and set aside order dtd.29/8/2003 ordering inquiry under sec.202 of the Code of Criminal Procedure and the order dtd.11/9/2006 issuing process by the learned Metropolitan Magistrate, Court NO.22 at Ahmedabad qua the petitioner.

8. All the aforesaid criminal complaints are filed by the respondent No.2 – original complainant named the Catholic Syrian Bank Limited against the respective petitioner – original accused No.1 and others on 29/8/2003 in the court of learned Metropolitan Magistrate Court No.15, Ahmedabad for the offences punishable under sections 420, 406, 407 and 120B of Indian Penal

Code alleging inter-alia that the complainant bank is a Public Limited Banking Company and one of its activities is discounting bill of exchange. That the accused No.1 is trading concerned and deals in cotton regularly regularly and having a Bank Account with the complainant bank. During the course of the business of the complainant and the accused No.1, they discounted the bill in question after sending materials to the buyer i.e. accused No.1 through the transport company i.e. accused Nos.2 and 3. The accused No.1 - petitioner approached the complainant bank to discount the said bill and considering the business relations with them, it is alleged that the complainant bank discounted the said bill and credited the bill amount in the account of the accused No.1 and sent the relevant materials to the buyer i.e. accused No.4 through their bank, Bank of India, for acceptance of the documents and taking delivery of the consignment. However, the buyer's bank returned the document since the buyer did not pay the bill amount to their bank within the stipulated time. It is further alleged in the impugned complaint that on inquiry into the non-payment of the bills by the buyer by the complainant bank, it was found that the accused Nos.1 to 4 conspired

together to cheat the complainant bank and accordingly it was found that without the transport receipts, the buyer took the delivery of goods supplied to him by the accused No.1 and did not pay the bill amount to the bank which the buyer was supposed to have done on the due date of the bill. It was also further alleged that all the accused conspired together to cheat the complainant bank and discounted the bill of exchange and accordingly the accused No.1 – petitioner herein had fraudulently and dishonestly induced the complainant bank to discount the bill of exchange which was given by the accused No.1. It was further alleged that the accused Nos.2 and 3 have delivered the goods without consignee copy of the transport receipts to the accused No.4. It was further alleged that the accused No.1 in conspiracy with the accused Nos.2, 3 and 4, by deceiving the complainant and intentionally induced the complainant bank to discount the bill of exchange. It was also further alleged that during the course of the internal inspection by the officers of the inspection department of the head office of the Bank, some irregularities were noticed in the documents and the matter was referred to the vigilance department of the bank for further internal investigation

and the vigilance department thoroughly investigated the transaction and concluded that the supplier and buyer colluded with the transport company and cheated the bank by committing fraud and also caused monetary loss to the complainant Bank. Under the circumstances, the vigilance department vide letter dtd.23/6/2003 instructed the complainant to file criminal complaints against the accused under the relevant provisions of law and therefore, the aforesaid impugned complaints came to be filed by the respondent No.2 – original complainant for the aforesaid offences on 29/8/2003.

9. It appears from the record that the learned Metropolitan Magistrate passed order of inquiry to be made by the Court under sec.202 of the Code of Criminal Procedure, on the very same day of filing of the complaint i.e. 29/8/2003. It also appears from the record that thereafter, the officers / senior manager of the original complainant came to be examined, which is popularly known as verification, by the learned Metropolitan Magistrate, Court No.22, Ahmedabad on 11/9/2006 i.e. after a period of three years from the date of filing of the complaints in question and order of inquiry under sec.202 of the Code of Criminal Procedure and the magistrate

passed order dtd.11/9/2006 to register the aforesaid complaints and issue process upon the accused persons for the offences punishable under sections 406, 407, 420, 120B of Indian Penal Code. Being aggrieved by and dissatisfied with the respective orders passed by the learned Metropolitan Magistrate dtd.11/9/2006 in issuing process upon the respective petitioner for the offences punishable under sections 406, 407, 420, 120B of Indian Penal Code, in the aforesaid respective complaints, the respective petitioner - original accused No.1 has preferred the present applications under sec.482 of the Code of Criminal Procedure for the aforesaid reliefs.

10.Mr.Chetan C. Pandya, learned advocate appearing on behalf of the petitioners - original accused No.1 has vehemently submitted that once the learned Magistrate passed an order for inquiry under sec.202 of the Code of Criminal Procedure, subsequently without any further inquiry and/or material on record, the learned Magistrate ought not to have taken cognizance and issued process upon the petitioners - original accused. It is submitted by him that the impugned orders dtd.11/9/2006 does not reflect any application of mind by the learned Metropolitan Magistrate. It is submitted that the

impugned orders passed by the learned Metropolitan Magistrate issuing process are non-speaking order and no reasons have been assigned and/or nothing has been discussed whether any inquiry has been conducted by him or not.

11.Mr.Pandya, has relied upon the following decisions of the Hon'ble Supreme Court:-

- (i) AIR 1962 SC 876
- (ii) (2004) 7 SCC 338
- (iii) (1984) 2 SCC 500
- (iv) (1998) 5 SCC 749 (para 28).

12.Mr.Chetan Pandya, learned advocate has further submitted that the even on bare reading of the impugned complaints, no case is made out against the petitioner for the offence punishable under sec.420 and other offences as alleged in the complaint and therefore on merits also the learned Metropolitan Magistrate ought not to have issued the process upon the petitioners. He has also further submitted that even orders dtd.29/8/2003 passed by the learned Metropolitan Magistrate to initiate inquiry under sec.202 of the Code of Criminal Procedure are non-speaking orders and no

reasons have been assigned for initiation of such and, therefore, the orders dtd.29/8/2003 are required to be quashed and set aside. It is also further submitted that even after initiation of inquiry under sec.202 of the Code of Criminal Procedure, without there being production of any further evidence and/or recording any evidence and/or making any inquiry as contemplated under sec.202 of the Code of Criminal Procedure, straightway after recording of the verification of the complainant, the Metropolitan Magistrate has issued the process, therefore, the said orders are required to be quashed and set aside.

13.All these applications are opposed by Mr.Panesar, learned advocate appearing on behalf of the respondent No.2 complainant. It is submitted that in the facts and circumstances of the case, as prima facie case has been made out against the respective petitioners for the offence punishable under sections 406, 407, 420 and 120B of the Indian Penal Code and when the learned Metropolitan Magistrate has issued the process upon the accused persons after having satisfied, the said orders are not required to be quashed and set aside. It is

submitted that at the time of issuance of the process what is required to be considered is that whether there is prima facie case for issuing process and not whether the accused are likely to be convicted or not. He has also submitted that as held by the Hon'ble Supreme Court in the case of Dy.Chief Controller of Imports and Exports Vs. Roshanlal Agrwal and others, reported in AIR 2003 S.C. 1900 at the stage of issuing process to the accused, the Magistrate is not required to record reasons and under the circumstances it is requested not to quash and set aside the respective complaints as well as the orders passed by the learned Metropolitan Magistrate issuing process to the accused on the ground that no reasons have been assigned. Mr.Panesar has also relied upon the decision of the Hon'ble Supreme Court in the case of U.P. Pollution Control Board Vs. M/s.Mohan Meakins Ltd., reported in AIR 2000 SC 1456 and in the case of Kanti Bhadra Shah Vs. State of West Bengal, reported in AIR 2000 SC 522. He has also submitted that the learned Metropolitan Magistrate, after considering the verification, examining the officer of the Bank on oath, considering the provisions of sec.202 of the Code of Criminal Procedure and having satisfied, has issued the

process and therefore, it is requested not to interfere with the impugned orders and dismiss all the petitions.

14.Mr.R.C. Kodekar, learned Additional Public Prosecutor has requested to pass appropriate order. However, has submitted that once earlier the learned Metropolitan Magistrate postponed the issuance of the process and passed an order for inquiry by the Court under sec.202 of the Code of Criminal Procedure, then there must be some further inquiry over and above the verification and from the impugned orders issuing process it does not appear that any inquiry was conducted by the learned Metropolitan Magistrate.

15.Heard the learned advocates appearing on behalf of the respective parties.

16.At the outset it is required to be noted that in the present petitions, respective petitioner has prayed for appropriate order to quash and set aside the orders passed by the learned Metropolitan Magistrate dtd.29/8/2003 ordering inquiry under sec.202 of the Code of Criminal Procedure, 1973. So far as the said order is concerned, the order passed on 29/8/2003 has been challenged in the year 2007 i.e. after a period of about four years and even otherwise considering the provisions of sec.202 of the

Code of Criminal Procedure, the learned Metropolitan Magistrate has discretion to postpone the issuance of the process and hold an inquiry by himself or by concerned police officer and/or by any other person as contemplated under sec.202 of the Code of Criminal Procedure. Under the circumstances, in the circumstances and even considering the averments in the complaints when the learned Metropolitan Magistrate has exercised the discretion ordering inquiry under sec.202 of the Code of Criminal Procedure, the same is not required to be interfered in exercise of the powers under sec.482 of the Code of Criminal Procedure. Under the circumstances, the prayer to quash and set aside orders dtd.29/8/2003 ordering inquiry under sec.202 of the Code of Criminal Procedure is hereby rejected.

17.Now so far as the prayer of the respective petitioner to quash and set aside the respective Criminal Cases are concerned, in the facts and circumstances of the case, considering the averments in the petitions and when the learned Metropolitan Magistrate has passed orders for inquiry under sec.202 of the Code of Criminal Procedure, the impugned complaints are not required to be quashed and set aside in exercise of the powers under sec.482 of

the Code of Criminal Procedure.

18. Now so far as the impugned orders passed by the learned Metropolitan Magistrate dtd.11/9/2006 issuing process against the respective petitioner are concerned, it is required to be noted that the impugned complaints came to be filed on 29/8/2003 and on the very same day the learned Metropolitan Magistrate passed orders for inquiry to be made by the court under sec.202 of the Code of Criminal Procedure. Now considering the provisions of sec.202 of the Code of Criminal Procedure, any Magistrate on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issuance of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether there is sufficient ground for proceeding or not. Thus, it appears that by passing the orders on 29/8/2003, ordering inquiry by the Court under sec.202 of the Code of Criminal Procedure, the learned Metropolitan Magistrate was satisfied to postpone the issuance of process against the accused and therefore, he passed the

orders for inquiry to be made by the Court under sec.202 of the Code of Criminal Procedure and it appears from the record that thereafter no further inquiry has been held by the learned Metropolitan Magistrate and verification was done by the officer of the Bank on 11/9/2006 and without there being any further inquiry, considering the verification, the learned Metropolitan Magistrate, Court No.22, Ahmedabad passed the impugned orders taking cognizance, registering the case and issuing process / summons to the accused. It is true that as held by the Hon'ble Supreme Court in the cases of Dy.Chief Controller of Imports and Exports (supra), U.P. Pollution Control Board (supra) and Kanti Bhadra Shah (supra), at the stage of issuing process to the accused, the Magistrate is not required to record reasons and in determining the question whether any process is to be issued or not, the Magistrate has to be satisfied whether there is sufficient ground for proceeding or not. It is also true that as held by the Hon'ble Supreme Court whether evidence is adequate for supporting the conviction can be determined only at the time of trial and not at the state of inquiry. However, considering the facts of the case on hand and as stated above, the learned Metropolitan

Magistrate has passed the orders ordering inquiry to be made by the Court under sec.202 of the Code of Criminal Procedure on 29/8/2003 and thereafter, without there being any further inquiry by the court, the Metropolitan Magistrate has issued the process examining the officer of the bank i.e. original complainant on oath i.e. considering the verification. On bare reading of the impugned orders dtd.11/9/2006 passed by the learned Metropolitan Magistrate, Court No.22, Ahmedabad issuing process upon the respective petitioner for the offence punishable under sections 406, 407, 420, 120B of Indian Penal Code, it appears that nothing on record whether after passing of the orders dtd.29/8/2003 ordering inquiry to be made by the Court under sec.202 of the Code of Criminal Procedure, whether there was any inquiry to be conducted by the court or not. It is also not the case of the respondent No.2 - original complainant that after orders dtd.29/8/2003, ordering inquiry to be made by the court under sec.202 of the Code of Criminal Procedure, there was any inquiry conducted by the court. Under the circumstances, when the learned Metropolitan Magistrate postpones the issuance of process upon the accused and passes order for inquiry to be made by the Court under

sec.202 of the Code of Criminal Procedure, there must be some further inquiry under sec.202 of the Code of Criminal Procedure, as the learned Metropolitan Magistrate was earlier satisfied not to take cognizance and was of the opinion that the issuance of the process against the accused is to be postponed and it requires inquiry under sec.202 of the Code of Criminal Procedure and therefore, on this ground alone, the impugned orders passed by the learned Metropolitan Magistrate dtd.11/9/2006 issuing process against the respective petitioner for the offence punishable under sections 406, 407, 420 and 120B of the Indian Penal Code, are required to be quashed and set aside and the matters are required to be remanded to the learned Metropolitan Magistrate for passing orders afresh, considering the provisions of sec.202 of the Code of Criminal Procedure.

19. For the reasons stated above, all the petitions succeed in part. Impugned orders passed by the Metropolitan Magistrate, Court No.22, Ahmedabad dtd.11/9/2006 passed in Criminal Case in question being Criminal Case No.8145 of 2006 (arising out of Inquiry Case No.80 of 2006 (Old Inquiry Case No.59 of 2003), Criminal Case No.8146 of 2006 (arising out of Inquiry Case No.85 of

2006 (Old Inquiry Case No.60 of 2003), Criminal Case No.8148 of 2006 (arising out of Inquiry Case No.87 of 2006 (Old Inquiry Case No.62 of 2003) and Criminal Case No.8149 of 2006 (arising out of Inquiry Case No.88 of 2006 (Old Inquiry Case No.63 of 2003), issuing process against the respective petitioner are hereby quashed and set aside and the matters are remanded to the learned Metropolitan Magistrate to pass appropriate orders for issuing process afresh in accordance with law and on merits, considering the provisions of sec.202 of the Code of Criminal Procedure. Such exercise to be completed within a period of two months from the date of receipt of writ of this order. Rule is made absolute accordingly in each of the petitions. However, it is made clear that this Court has not expressed any opinion on the merits in favour of either party and it is ultimately for the learned Magistrate to pass appropriate order of issuing process subject to his subjective satisfaction in accordance with law and on merits.

[M.R. SHAH, J.]

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